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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,642	12/04/2001	Adam Kois	10624-049-999	6698
20583	7590	04/28/2005	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017				RAYMOND, RICHARD L
ART UNIT		PAPER NUMBER		
		1624		

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/004,642	KOIS ET AL.
Examiner	Art Unit	
Richard L. Raymond	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,7-14,24-27 and 39-44 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1,2 and 7-11 is/are allowed.  
 6) Claim(s) 12-14,24-27 and 39-44 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                      |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/28/02, 2/15/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152). |
|   | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Response of February 15, 2005 canceled claim 38. Accordingly, the claims now pending are claims 1, 2, 7-14, 24-27 and 39-44.
2. In view of the amendments and arguments presented in the Response, all the rejections of record, except for the obviousness-type double patenting rejection, have been overcome.

### ***Obviousness-type Double Patenting***

3. Claims 12-14, 24-27 and 39-44 are again provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 17 and 27 of copending Application No. 10/004645. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of both applications use the same compounds in the same hosts to treat overlapping conditions. As noted in the last Office action, the treatment of ischemic conditions, for example, is in both sets of claims. Applicants indicated in their Remarks that this rejection will be addressed upon indication of allowable subject matter in the present application. So is now the case.

### ***Allowable Subject Matter***

4. Claims 1, 2 and 7-11, drawn to compounds and compositions, are allowed.

***Conclusion***

5. This action is **not** made final.
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard L. Raymond whose telephone number is (571) 272-0673. The examiner can normally be reached on maxi-flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached on (571) 272-0674. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard L. Raymond  
Primary Examiner  
Art Unit 1624

rr  
April 20, 2005